

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

TRINIDAD VARGAS, on behalf of herself,
FLSA Collective Plaintiffs and the Class,

Plaintiff,

-against-

PIER 59 STUDIOS L.P. and
FEDERICO PIGNATELLI,

Defendants.

**ANSWER TO FIRST
AMENDED CLASS ACTION
COMPLAINT**

Case No: 18-cv-10357 (VSB)

Defendants, Pier 59 Studios and Federico Pignatelli, by and through their attorneys, Bond, Schoeneck & King, PLLC, answer the First Amended Class Action Complaint (hereinafter "Complaint") as follows:

1. The allegations contained in paragraph 1 of the Complaint do not require a response. To the extent that a response is required, Defendants deny the truth of the allegations of paragraph 1 of the Complaint.

2. The allegations contained in paragraph 2 of the Complaint do not require a response. To the extent that a response is required, Defendants deny the truth of the allegations of paragraph 2 of the Complaint.

3. The allegations contained in paragraph 3 of the Complaint do not require a response. To the extent that a response is required, Defendants deny the truth of the allegations of paragraph 3 of the Complaint.

4. Admit the truth of the allegations set forth in paragraph "4" of the Complaint.

5. Deny the truth of the allegations set forth in paragraph "5" of the Complaint.

6. Admit the truth of the allegations set forth in paragraph "6" of the Complaint.

7. Admit the truth of the allegations set forth in paragraph “7” of the Complaint.

8. Admit the truth of the allegations set forth in paragraph “8” of the Complaint.

9. Admit the truth of the allegations set forth in paragraph “9” of the Complaint.

10. Admit the truth of the allegations set forth in paragraph “10” of the Complaint.

11. Admit the truth of the allegations set forth in paragraph “11” of the Complaint.

12. Deny the truth of the allegations set forth in paragraph “12” of the Complaint.

13. The allegations contained in paragraph 13 of the Complaint do not require a response. To the extent that a response is required, Defendants deny the truth of the allegations of paragraph 13 of the Complaint.

14. Deny the truth of the allegations set forth in paragraph “14” of the Complaint.

15. Deny the truth of the allegations set forth in paragraph “15” of the Complaint.

16. Deny the truth of the allegations set forth in paragraph “16” of the Complaint.

17. Deny the truth of the allegations set forth in paragraph “17” of the Complaint.

18. Deny the truth of the allegations set forth in paragraph “18” of the Complaint.

19. Deny the truth of the allegations set forth in paragraph “19” of the Complaint.

20. Deny the truth of the allegations set forth in paragraph “20” of the Complaint.

21. Deny the truth of the allegations set forth in paragraph “21” of the Complaint.

22. Deny the truth of the allegations set forth in paragraph “22” of the Complaint.

23. Deny the truth of the allegations set forth in paragraph “23” of the Complaint.

24. Deny the truth of the allegations set forth in paragraph “24” of the Complaint, except admit that Plaintiff worked for Pier 59 as an office cleaner.

25. Deny the truth of the allegations set forth in paragraph “25” of the Complaint.

26. Deny the truth of the allegations set forth in paragraph “26” of the Complaint.

27. Deny the truth of the allegations set forth in paragraph “27” of the Complaint.
28. Deny the truth of the allegations set forth in paragraph “28” of the Complaint.
29. Deny the truth of the allegations set forth in paragraph “29” of the Complaint.
30. Deny the truth of the allegations set forth in paragraph “30” of the Complaint.
31. Deny the truth of the allegations set forth in paragraph “31” of the Complaint.
32. Deny the truth of the allegations set forth in paragraph “32” of the Complaint.
33. Deny the truth of the allegations set forth in paragraph “33” of the Complaint.
34. Deny the truth of the allegations set forth in paragraph “34” of the Complaint.
35. Deny the truth of the allegations set forth in paragraph “35” of the Complaint.
36. Deny the truth of the allegations set forth in paragraph “36” of the Complaint.
37. Deny the truth of the allegations set forth in paragraph “37” of the Complaint.
38. Deny the truth of the allegations set forth in paragraph “38” of the Complaint.
39. Deny the truth of the allegations set forth in paragraph “39” of the Complaint.
40. Deny the truth of the allegations set forth in paragraph “40” of the Complaint.
41. Deny the truth of the allegations set forth in paragraph “41” of the Complaint.
42. Deny the truth of the allegations set forth in paragraph “42” of the Complaint.
43. Deny having knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “43” of the complaint.

44. Defendants repeat and reallege their responses to the allegations of the Complaint set forth herein

45. Admit the truth of the allegations set forth in paragraph “45” of the Complaint.
46. Deny the truth of the allegations set forth in paragraph “46” of the Complaint.
47. Admit the truth of the allegations set forth in paragraph “47” of the Complaint.

48. Deny the truth of the allegations set forth in paragraph “48” of the Complaint.

49. Deny the truth of the allegations set forth in paragraph “49” of the Complaint.

50. Admit the truth of the allegations set forth in paragraph “50” of the Complaint, except deny that there will be any basis for amending the complaint.

51. Deny the truth of the allegations set forth in paragraph “51” of the Complaint.

52. Deny the truth of the allegations set forth in paragraph “52” of the Complaint.

53. Deny the truth of the allegations set forth in paragraph “53” of the Complaint.

54. Deny the truth of the allegations set forth in paragraph “54” of the Complaint.

55. Deny the truth of the allegations set forth in paragraph “55” of the Complaint.

56. Defendants repeat and reallege their responses to the allegations of the complaint set forth herein.

57. Deny the truth of the allegations set forth in paragraph “57” of the Complaint.

58. Deny the truth of the allegations set forth in paragraph “58” of the Complaint.

59. Deny the truth of the allegations set forth in paragraph “59” of the Complaint.

60. Deny the truth of the allegations set forth in paragraph “60” of the Complaint.

61. Deny the truth of the allegations set forth in paragraph “61” of the Complaint.

62. Deny the truth of the allegations set forth in paragraph “62” of the Complaint.

63. Deny the truth of the allegations set forth in paragraph “63” of the Complaint.

64. Deny the truth of the allegations set forth in paragraph “64” of the Complaint.

65. Defendants repeat and reallege their responses to the allegations of the complaint set forth herein.

66. Admit the truth of the allegations set forth in paragraph “66” of the Complaint.

67. Admit the truth of the allegations set forth in paragraph “67” of the Complaint.

68. Deny the truth of the allegations set forth in paragraph “68” of the Complaint.

69. Deny the truth of the allegations set forth in paragraph “69” of the Complaint.

70. Deny the truth of the allegations set forth in paragraph “70” of the Complaint.

71. Deny the truth of the allegations set forth in paragraph “71” of the Complaint.

72. Defendants repeat and reallege their responses to the allegations of the complaint set forth herein.

73. Admit the truth of the allegations set forth in paragraph “66” of the Complaint.

74. Admit the truth of the allegations set forth in paragraph “67” of the Complaint.

75. Deny the truth of the allegations set forth in paragraph “68” of the Complaint.

76. Deny the truth of the allegations set forth in paragraph “69” of the Complaint.

77. Deny the truth of the allegations set forth in paragraph “70” of the Complaint.

78. Defendants repeat and reallege their responses to the allegations of the complaint set forth herein.

79. Admit the truth of the allegations set forth in paragraph “79” of the Complaint.

80. Deny the truth of the allegations set forth in paragraph “80” of the Complaint.

81. Deny the truth of the allegations set forth in paragraph “81” of the Complaint.

82. Deny the truth of the allegations set forth in paragraph “82” of the Complaint.

83. Deny the truth of the allegations set forth in paragraph “83” of the Complaint.

FIRST DEFENSE

84. Plaintiffs’ Complaint, in whole or in part, fails to state a claim upon which relief can be granted.

SECOND DEFENSE

85. Plaintiffs’ claims are barred, in whole or in part, by the de minimis doctrine.

THIRD DEFENSE

86. Plaintiffs' claims are not properly the subject of a class action.

FOURTH DEFENSE

87. At all times, Defendants acted in conformity with the FLSA and the New York Labor Law.

FIFTH DEFENSE

88. Any alleged violations of the New York Labor Law were not willful and were based on a good faith reasonable belief of compliance with relevant laws, therefore, any claims for liquidated damages or attorney's fees for the Plaintiffs or any purported class member are barred under the New York Labor Law.

SIXTH DEFENSE

89. To the extent Plaintiffs have failed to mitigate their damages, they are not entitled to relief.

SEVENTH DEFENSE

90. Plaintiffs lack standing to be, and are not adequate representatives of the putative class action.

EIGHTH DEFENSE

91. Defendants deny that Plaintiffs and/or any purported class members have suffered any injury or damage whatsoever, and further deny that it is liable to Plaintiffs and/or to any purported class member for any of the injury or damage claimed or for any injury or damage whatsoever.

NINTH DEFENSE

92. Plaintiffs' claims or damages, if any, are barred, in whole or in part, by the doctrines of waiver, estoppel and/or unclean hands.

TENTH DEFENSE

93. The New York Labor Law claims are barred in whole or in part by the applicable limitations period.

ELEVENTH DEFENSE

94. The complaint is barred, in whole or in part, because Plaintiffs cannot demonstrate that they were entitled to recover liquidated damages or any penalties under state law. Defendants have at all times compensated Plaintiffs in good faith and with a reasonable ground and in conformity with regulations, rulings, approvals and interpretations issued by the United States and New York State Department of Labor.

TWELFTH DEFENSE

95. Plaintiffs' claims are barred or should be reduced, in whole or in part, by exclusions, credits, recoupments or offsets permissible under law.

THIRTEENTH DEFENSE

96. Subject to proof through discovery, some or all of Plaintiffs' claims may be barred, in whole or in part, by the doctrine of after-acquired evidence.

FOURTEENTH DEFENSE

97. Plaintiffs did not voice a question, concern or complaint about their wages until after they left their positions. As a result, Plaintiffs are estopped in whole or in part from pursuing their claims.

FIFTEENTH DEFENSE

96. Defendants made complete and timely payments of wages due to the Plaintiffs.

SIXTEENTH DEFENSE

97. At all relevant times, Defendant had policies in place prohibiting discrimination and/or harassment against individuals in categories protected by federal, New York State and New York City civil rights laws, prohibiting retaliation against individuals who made good faith reports of such discrimination and/or harassment, and providing complaint procedures for effective and immediate redress and resolution of such matters. Plaintiff unreasonably failed to take advantage of the complaint procedures set forth therein.

SEVENTEENTH DEFENSE

98. At all relevant times, Defendant had policies in place prohibiting discrimination and/or harassment against individuals in categories protected by federal, New York State and New York City law.

EIGHTEENTH DEFENSE

99. Defendant did not encourage, condone, approve or ratify any alleged harassment, discrimination or retaliation against Plaintiff.

NINETEENTH DEFENSE

100. The harassment alleged in the First Amended Complaint was not severe and/or pervasive enough to rise to the level of sexual harassment or any other form of harassment in violation of the New York State Human Rights Law, New York Executive Law § 290 *et seq.*

TWENTIETH DEFENSE

101. Plaintiff's discrimination and retaliation causes of action are barred, in whole or in part, under the election of remedies doctrine in that she claims to have initially pursued an

administrative remedy before the New York State Division of Human Rights (“State Division”) and those allegations, including those facts alleged with respect to Plaintiff’s retaliation claim, were raised before the State Division.

RESERVATION OF OTHER DEFENSES

Defendants reserve the right to assert additional defenses, the bases for which may be disclosed in the course of discovery.

PRAYER FOR RELIEF

WHEREFORE, having fully responded to Plaintiffs’ Complaint, Defendants pray for relief as follows:

1. A judgment in its favor denying all of the relief requested by Plaintiffs against Defendants and dismissing those claims with prejudice;
2. That the Court award Defendants their costs, disbursements and fees incurred in defending this action; and
3. For such other and further relief that this Court deems just and equitable.

Dated: Garden City, New York
March 12, 2019

Respectfully submitted,

BOND, SCHOENECK & KING, PLLC

By: 

Howard M. Miller (HM-4538)
Attorney for Defendants
1010 Franklin Avenue, Suite 200
Garden City, New York 11530
(516) 267-6318